6-21/150.00 Issuance of Writ of Possession (Claim and Delivery)

At the hearing if the plaintiff establishes probable validity of the claim to possession and an Undertaking by Personal Sureties (CD-140) as required by CCP 515.010, the court may issue the Writ of Possession. (CCP 512.060, 515.010, 512.020)

• 6-21/150.10 Undertaking

The undertaking is to compensate the defendant for the return of the property and any sum recovered against the plaintiff. The undertaking is in an amount not less than twice the value of the defendant's interest in the property or in a greater amount as determined by the market value of the property less the amount due and owing on any conditional sales contract or security agreement and all liens and encumbrances on the property. (CCP 515.010(a))

The court may waive the requirement of an undertaking if the defendant has no interest in the property. If the undertaking is waived, it must be indicated on the Order for Issuance of Writ of Possession. However, the Sheriff requires a court order or the plaintiff's written instructions stating that the court has ordered no undertaking because the defendant has been found to have no equity in the property per CCP 515.010. In lieu of a separate order directed to the Sheriff, Item 5 (c) of the Order for Writ of

Possession may be modified to include the wording "No bond required." If the undertaking is waived, the court shall indicate the amount of the defendant's undertaking for redelivery of the property to satisfy CCP 515.020 on the Order for Writ of Possession (CD-120) (CCP 515.010(b).

An "undertaking" or "bond" means a surety, indemnity, fiduciary, or like undertaking executed by the sureties alone. (CCP 995.190, 995.140) In a case where the plaintiff posts a cash deposit rather than an undertaking, a receipt from the clerk of the court is not sufficient to satisfy CCP 515.010. A court order directing the issuance of a writ "upon posting of an undertaking (or cash collateral) is also not sufficient. A court order is unnecessary because cash can be deposited in lieu of a bond (undertaking). (CCP 995.710(a)(1)) The deposit must be accompanied by an agreement setting forth the terms and conditions of the deposit. The receipt of cash deposit must be accompanied by an agreement setting forth the terms and conditions of the deposit a copy of which must be served.